

The emergence of the Fox network is illustrative. As the Commission has observed:

The emergence of Fox has greatly enhanced source diversity by offering viewers alternative, network-quality prime time programming. It has also bolstered outlet diversity by providing a solid financial base to Fox's affiliates, many of which were formerly marginal independent UHF stations.³⁵

Simply stated, television viewers have benefited from the advent of a new network in a number of ways beyond the choice of more network programs. Network programming, after all, is only on the air for a portion of the broadcast day, particularly for new networks. For periods when the stations receive no network feed, the enhanced financial viability of these stations has permitted them to buy higher cost (and higher quality) syndicated programming. In addition, many of the stations have been able to add their own locally produced news and public affairs shows. For example, numerous Fox affiliates now have a 10 p.m. local newscast.³⁶

There is no reason to think that four -- or five -- network affiliates in a market is "enough." The public benefits with each additional source of diversity and competition. Lifting the freeze will achieve these twin goals.

3. Grant Of The Requested Waiver Is Supported By The WB's Goal Of Increasing The Amount of Educational And Informational Programming Available To Children Nationwide

Even while the Commission is contemplating regulating the amount of educational and informational children's programming that a licensee must air, it can do nothing, of course, to

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4111, 4113 (1992).

³⁵ *Evaluation of the Syndication and Financial Interest Rules*, 8 FCC Rcd 3282, 3333 (1993); *modified*, 8 FCC Rcd 6736 (1993); *modified*, 10 FCC Rcd 12165 (1995).

³⁶ Approximately 40 percent of Fox affiliates now broadcast a local evening news program. T.L. Stanley, Michael Freeman, "There's No Excuse," *Broadcasting & Cable*, June 10, 1996 at 5.

regulate the quality of such programming. The reality is that the newest, smallest stations in a community already have the worst chance of obtaining quality educational programming at an affordable price -- and this is unlikely to change. To ensure that *all* affiliates of The WB, including any newly built stations that could result from these series of applications, have high quality, educational children's programming, The WB will add to its network feed a 30-minute educational children's program each weekday commencing in September 1997.³⁷ This production will continue irrespective of whether the FCC adopts a quantitative rule with respect to educational children's programming.

In addition, The WB will continue to produce and air top quality educational and informational interstitials like the "Crazy Careers" segments that it already airs. The WB also will continue to include, in its line-up of entertainment children's programming, shows that incorporate morals and lessons and include segments that have education as a significant purpose.³⁸ Finally, The WB will continue to air one hour of prime time family programming, which is specifically designed to include programs that the entire family can watch together. The WB has committed the 8-9 p.m. hour for this purpose, and will continue to do so.

In short, lifting the freeze could help bring The WB's network programming -- including The WB's children's programming -- to this community. This, in turn, would increase the amount of programming specifically designed to meet the educational and informational needs of

³⁷ This program is in development with Norman Lear.

³⁸ Storylines for *Animaniacs* and *Pinky and The Brain*, for example, are often adapted from classical literature or history. *Animaniacs* segments have also portrayed life during different historical periods. In other segments, the *Animaniacs* and *Pinky and The Brain* characters have provided basic introductions to modern scientific principals.

children, as well as family programming, available to viewers. Lifting the freeze is therefore in the public interest for this reason as well.

III. GRANT OF THE REQUESTED WAIVER IS NECESSARY AS SOON AS POSSIBLE

A freeze order, by its nature, causes delay. Newly emerging networks, however, are too fragile to be able to afford delay.

The WB has been on the air for only one and a half years, and has a long, treacherous path to travel before earning a profit. It has been widely reported that an initial investment of approximately \$300 million was necessary for the launch of The WB and that first year losses for the network were in the \$50-\$75 million range.³⁹ The WB is not expected to break even for four years.⁴⁰ The WB, like any new network, is thus starting its network life in the red.

The establishment of a new network as a profitable entity will depend in large measure upon the life blood of any national network -- its primary affiliates. Accordingly, if The WB is to survive, let alone flourish, it must be allowed to compete for affiliates *now* in communities in which it has none. The freeze works directly against the emergence of this new network competitor. Expeditionary action on the part of the Commission is needed, therefore, to allow the construction of new television stations that are potential WB affiliates. Granting the freeze waiver is a necessary step to achieving this end -- both in general and for Petitioner in particular.

³⁹ David Tobenkin, *New Players Get Ready to Roll: UPN and WB Prepare to Take Their Shots*, Broadcasting & Cable, Jan. 2, 1995, at 30 ("New Players"). The WB's losses for the first quarter of 1996 were \$24 million. Michael Katz, *Time Warner Reports First-Quarter Losses*, Broadcasting & Cable, April 22, 1996 at 55.

⁴⁰ *New Players* at 30.

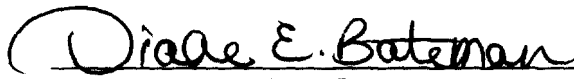
CONCLUSION

For all of the foregoing reasons, Petitioner asks the Commission to grant a waiver of its Freeze Order. Indeed, in order to make opportunities available for these new potential affiliates at the earliest possible time, Petitioner also respectfully requests that the Commission rule on this petition expeditiously.

CERTIFICATE OF SERVICE

I, Diane E. Bateman, hereby certify that on this 23rd day of July, 1996, a copy of the foregoing "Petition for Rulemaking" was hand-delivered to the following:

Mr. Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission
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Diane E. Bateman